IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

MONDAY, THE TWENTY THIRD DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE K.C. BHANU

WRIT APPEAL NO : 1885 of 1999

(Writ Appeal under Clause 15 of the Letters Patent Appeal against the Order dated 22/07/1999 in WP NO : 3181 OF 1990 on the file of the High Court.)

Between:

1 Mohd.Hasanuddin Khan S/o.Late M.Faizuddin Khan
R/o.H.No.11-5-47,Red Hills Hyderabad.
2 Mohd.Shafiuddin Khan S/o.Late M.Fiazuddin Khan
R/o.H.No.11-5-47,Red Hills Hyderabad.
Rep.by G.P.A. Kareemunnis Begum
3 Mohd.Immamuddin Khan S/o.Late M.Fiazuddin Khan
R/o.H.No.11-5-47,Red Hills Hyderabad.
4 Vicarunnisa Begum D/o.Late M.Fiazuddin Khan
R/o.H.No.11-5-47,Red Hills Hyderabad.
Rep.by G.P.A. M.Azamuddin Hussain
5 Laiunnisa Begum D/o.Late M.Fiazuddin Khan
R/o.H.No.11-5-47,Red Hills Hyderabad.
Rep.by G.P.A. M.Hasanuddin Khan
6 Kareemunnisa Begum W/o.Late M.Fiazuddin Khan
R/o.H.No.11-5-47,Red Hills Hyderabad.
7 Mohd. Fasiuddin Faisal,
R/o. 11-5-121, Redhills, Hyderabad.

(Petitioner No.7, is brought on record as L.R. of Petitioner NO. 4. as per Court Order Dt. 26.7.2004, in WAMP.2070/04.)

..... APPELLANTS

AND

1 The State of A.P Rep.by its Secretary to Govt, Revenue Dept

Secretariat Buildings Hyderabad.

2 The Custodian, Evacuee Property in A.P/The Commissioner for Survey, Settlements and Land Records,Station Road, Nampally, Hyderabad.

3 The Dist Collector, R.R.Dist.

4 S.Janardhan Rao I.A.S., Secretary to the Commissioner for Land Revenue Station Road Nampally, Hyderabad.

5 Sri D.B.Bhambani Retired Chief Engineer P.W.D.6/1,Shakti Nagar B.H.E.L Bhoopal and G.P.A. of all share holders.
(impleaded as per court order dt.23-4-90 in WPMP.No.7423/90

6 J.T.Bhambhani
(impleaded as per court order dt.23-4-90 in WPMP.No.7423/90)

7 Vidya Bhambhani
(impleaded as per court order dt.23-4-90 in WPMP.No.7423/90)

8 Kavita Moorjani
(impleaded as per court order dt.23-4-90 in WPMP.No.7423/90)

9 Miss.Koshi Bhambhani
(impleaded as per court order dt.23-4-90 in WPMP.No.7423/90)

10 Mrs.Kamlesh Khanna
(impleaded as per court order dt.23-4-90 in WPMP.No.7423/90)

11 R.S.Bhambhani
(impleaded as per court order dt.23-4-90 in WPMP.No.7423/90)

12 R.Bhambhani
(impleaded as per court order dt.23-4-90 in WPMP.No.7423/90)

13 H.B.Bhambhani
(impleaded as per court order dt.23-4-90 in WPMP.No.7423/90)

14 M.B. Bhambhani
(impleaded as per court order dt.23-4-90 in WPMP.No.7423/90)

15 S.B. Bhambhani
(impleaded as per court order dt.23-4-90 in WPMP.No.7423/90)

16 Mrs.Poonam Karmani
(impleaded as per court order dt.23-4-90 in WPMP.No.7423/90)

17 Madhu Bhambhani
(impleaded as per court order dt.23-4-90 in WPMP.No.7423/90)

18 Jagadish Bhambhani
(impleaded as per court order dt.23-4-90 in WPMP.No.7423/90)

19 Ashok Bhambhani
(impleaded as per court order dt.23-4-90 in WPMP.No.7423/90)

20 Kamal Bhambhani
(impleaded as per court order dt.23-4-90 in WPMP.No.7423/90)

21 Miss Arsudhi Ramchand Panjwani
(impleaded as per court order in wpmp.no.13399/94 dt.27-6-94)

22 Anandram Ramchand Panjwani
(impleaded as per court order in wpmp.no.13399/94 Dated: 27-6-94)

23 Vishindass Ram Chand Panjwani
(impleaded as per court order in wpmp.no.13399/94 Dt.27-6-94)

24 Jathan and Ramchand Panjwani
(impleaded as per court order in wpmp.no.13399/94 Dated : 27-6-94)

25 Gurubu Parsnam Navzni S/o.Parsnam
R/o.B/6 Navjivam Society, R.C.Marg Chamber,Mumbai.

(impleaded as per court order in wpmp.no.2223/03 dt.6-8-03)

26 Smt. Sakeena Ara Begum,

11-5-121, Redhills, Hyderabad.

27 Smt. Husna Ara Begum,
Jaddah, Saudi Arabia.

28 Smt. Sameena Ara Begum,
H.NO. 8788, Lomita Doctor Appartments "C" ALTA LOMA, C.A. 91701, U.S.A.

29 Smt. Lubna Begum, Po. Box. No. 8972, Dubai, United Arab Amirates .

(26 to 29 are impleaded as per Court Order Dt. 26.7.2004.
in WAMP. 2070 of 2004.)

.....RESPONDENTS

Counsel for the Appellant:MR.B.V.S.SIVARAMA PRASAD

Counsel for the Respondent Nos.1 to 4: GP FOR REVENUE

The Court made the following :

The Hon'ble Sri Justice B. Sudershan Reddy

a n d

The Hon'ble Sri Justice K.C. Bhanu

WRIT APPEAL No. 1885 of 1999

O R D E R: (per Sri Justice K.C. Bhanu)

This writ appeal under Clause 15 of the Letters Patent Appeal is directed against the order dated 22.7.1999 passed by a

learned single Judge of this court in W.P. No. 311 of 1990.

The brief facts that are required to be noticed for the disposal of the present appeal are as follows. For the purpose of convenience, the parties are referred to as arrayed in the writ petition.

The 2nd respondent notified the properties of the writ petitioners as evacuee properties and the father of the 1st petitioner unsuccessfully contested the claim for compensation. The father of the 1st petitioner filed W.P. 76 of 1978 to quash the order of the Government of Andhra Pradesh directing the father of the 1st petitioner to leave India and declaring him as a Foreigner under Section 3(2)(A) of the Foreigners Act. This court declared the father of the petitioner as a citizen of India. Writ Appeal No. 619 of 1981 was filed against the said orders, which was also dismissed. In view of the orders of this court, the father of the 1st petitioner is entitled for restoration of his properties which were wrongly notified as evacuee properties. As his father died, all his rights have been devolved upon the petitioners. The 1st respondent passed the impugned order dated 12.7.1989, which was not communicated to the petitioners and they came to know about the impugned order through some third parties. Hence the petitioners filed the writ petition.

The respondents filed counter stating that the properties of Fiazuddin Khan have been declared as evacuee properties vide Notification No. 208 S.No. 60 dated 27.9.1951 and the same has been challenged in different courts of law but ultimately the plea of Fiazuddin Khan was rejected. The apex court also in C.A. No. 2409 of 1968 rejected the request of the petitioners and, therefore, there is no case for any claim at this point of time. In view of the dismissal of the appeal made by Fiazuddin Khan before the Supreme Court, he is an evacuee and therefore his properties have been vested with the Government. The said Fiazuddin Khan lost all his claims before the Courts. The wife of the evacuee Fiazuddin Khan i.e. the 6th appellant filed O.P. 268 of 1980 before the V Addl. Judge, City Civil Court,

Hyderabad stating that the properties were delivered to her towards *mehr* amount. The said suit was dismissed. In appeal, interim stay was obtained but the stay was subsequently vacated. After vacation of stay, the possession of land was taken over by the M.R.O. and most of the lands were allotted to the displaced persons. As the petitioners failed to establish their right, title and interest over the suit schedule property, the respondents prayed to dismiss the writ petition.

Considering the material on record and the rival submissions made by the learned counsel for the respective parties, the learned single Judge held that the representation of the petitioners was rightly rejected on the ground that final judicial determination in respect of the title to the property has taken place and there was no question of the property being returned back to the petitioners, and accordingly dismissed the writ petition.

The petitioners made representation dated 30.10.1983 requesting to release 350 acres in their favour and to grant injunction restraining the Commissioner of Settlement, Survey and Rehabilitation from dispossessing the petitioners from the said properties. The said representation was dismissed under the impugned proceedings in Memo No.2895/L.A.1/86 dated 12.7.1989 on the ground that the Supreme Court and the other courts have rejected the case of the petitioners and therefore their request to examine them again has no ground. The said Memo is under challenge.

Learned counsel for the appellants-petitioners contended that Late Fiazuddin Khan was not declared to be a Foreigner in view of the decision by this court in W.A. 619 of 1981and therefore the Government ought to have declared that the properties in question are not evacuee properties and that the properties in question cannot be held to be evacuee properties in view of the fact that Late Fiazuddin Khan was declared to be a citizen of India; that there was no delay in making representation as the matter was pending in the

courts for several years. Hence, he prays to set aside the order under challenge.

On the other hand, the learned Government Pleader for Revenue, appearing for respondents 1 to 4, contended that the representation was rejected on the ground that the apex court has already decided that divesting of the title of the property vests with the Government as evacuee property and that has become final and the petitioners who are claiming title through Fiazuddin Khan cannot turn round and say that the properties cannot be said to be evacuee properties and after considering the material on record the learned single Judge of this court rightly dismissed the writ petition and there are absolutely no grounds to interfere with the same.

The present petitioners are claiming right, title and interest through Mohd. Fiazuddin Khan. It is not in dispute that the property which the petitioners claim was declared as evacuee property by order of Deputy Custodian of Evacuee Properties on 18.5.1951. That has become final in view of the decision in Mohd. Faisuddin Khan v. Govt. of India (AIR 1976 SC 361). As per the decision referred to above, the right, title and interest of the father of the appellants 1 to 5 was extinguished and the property vested absolutely in the Central Government, free from any encumbrances. After lapse of more than 5 decades the present writ petition is filed claiming right, title and interest. It is also not in dispute that the claim for compensation in respect of the properties in question was also not granted by the apex court. It is specifically held in the aforementioned decision that Mohd. Fiazuddin Khan was not entitled to claim compensation for the property. Now the appellants claim the property only through Mohd. Fiazuddin Khan. The issue has already been decided by the apex court long back. Under these circumstances, the Government rejected the case of the appellants as final determination of the title of the property had taken place. As per the impugned memo, the claim of the appellants was rejected as the Supreme Court and the other courts have already rejected the case of the appellants and the appellants have no ground to ask for consideration of the

representation filed by them. In our considered opinion the Government rightly did so because the issue has been finally determined by the Supreme Court stating that the property now claimed by the appellants vests with the Government as evacuee property and the same was declared about five decades back. The appellants are not claiming right, title and interest by way of any other document except stating that they are the legal representatives of one Mohd. Fiazuddin Khan. Therefore, in our considered opinion the claim of the appellants is barred by constructive *res judicata* as the issue has already been settled by the apex court. Therefore, rightly the learned single Judge dismissed the writ petition as totally unsustainable. The order under appeal does not suffer from any legal infirmities or factual errors. There are absolutely no grounds to interfere with the order under appeal. The present appeal is filed without there being any infringement of the legal rights of the appellants only by way of speculation which is nothing but the abuse of process of court. The 6th appellant herein representing other appellants has not come to the court with clean hands. She has suppressed the factum of filing of earlier suit. Hence the writ appeal deserves to be dismissed with costs.

In the result, the writ appeal is dismissed with costs, quantified at Rs.5,000/-.

_____

B. Sudershan Reddy, J.

_____

K.C. Bhanu, J.

Date: --08—2004.

MVB.

To

1 The State of A.P Rep.by its Secretary to Govt, Revenue Dept
Secretariat Buildings Hyderabad.
2 The Custodian, Evacuee Property in A.P/The Commissioner for Survey, Settlements and Land Records, Station Road, Nampally,
Hyderabad.
3 The Dist Collector,
R.R.Dist.
4 S.Janardhan Rao I.A.S., Secretary to the Commissioner for Land Revenue
Station Road Nampally, Hyderabad.
5 Two CCs to the Government Pleader for Revenue, High Court Buildings, Hyderabad.

6 Two CD copies.